

STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY

IN RE:)	
)	
KOFI OHENE-AGYEKUM)	Complaint No. 2009-003507
2629 Harrison)	
Kansas City, MO 64108.)	

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND KOFI OHENE-AGYEKUM**

Come now Kofi Ohene-Agyekum ("Licensee" or "Respondent") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a pharmacy intern will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by

operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the draft complaint, the investigative report, and other documents relied upon by the Board in determining there was cause to discipline his license.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 2007027739, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Kofi Ohene-Agyekum is licensed by the Board as a pharmacy intern, License No. 2007027739. Respondent's license was, at all times relevant herein, current and active.

3. At the time of the events alleged herein, Respondent was a pharmacy intern at CVS Pharmacy, Store #8583 located 4531 Troost, Kansas City, MO 64110, Permit Number 2006015966 (hereinafter sometimes referred to as "CVS" and/or "CVS Pharmacy").

4. On or about June 15, 2009, the Board received written notification that Respondent had been terminated from his employment at CVS Pharmacy, Store #8583 on June 11, 2009 due to misappropriation and fraudulent use of gift cards.

5. On or about June 26, 2009, the Board assigned Board Inspector Frank Van Fleet, R.Ph, to conduct an investigation into the circumstances leading to Respondent's termination from CVS Pharmacy, Store #8583.

6. Board Inspector Frank Van Fleet prepared an Investigation report dated August 12, 2009 which was received by the Board on August 17, 2009.

7. The Board met and reviewed Inspector Van Fleet's Investigation Report, as well as documentation provided by Respondent's former employer, and based upon Inspector Van Fleet's investigation, the Board, pursuant to Section 338.055.3, RSMo, concluded Respondent engaged in conduct which would be grounds for disciplinary action by the Board.

Unauthorized Use of Respondent's Employee Discount Card

8. Respondent was hired by CVS Pharmacy on June 4, 2006 in New Jersey and subsequently transferred to Store #8583 in Kansas City, Missouri on April 7, 2007.

9. As an employee of CVS, Respondent was issued an employee discount card. Respondent's employee discount card account number was 007493.

10. On or about July 10, 2009, Inspector Van Fleet conducted a telephone interview with Ms. Christina Ferguson, CVS Pharmacy Supervisor for Respondent's former employer.

11. Ms. Ferguson advised that an internal investigation involving Respondent had commenced when a member of CVS Pharmacy's management team reported that Respondent was allowing unauthorized persons to utilize his employee discount card without authorization or permission.

12. CVS' employee policies and procedures provided:

“Merchandise purchased with your employee discount is for the personal consumption of you and/or your immediate family. Employee Discount cards are to be used only by you and/or your spouse.”

13. CVS Loss Prevention Manager, Stephen Sullivan, and CVS Store #8583 Manager Doug Dehl interviewed Respondent on June 7, 2009.

14. On June 7, 2009, Respondent admitted to Mr. Sullivan and Mr. Dehl, that he allowed family and school friends to use his employee discount card on numerous occasions to obtain unauthorized discounts in store merchandise.

15. On June 7, 2009, Respondent provided a written statement to his employer in which he acknowledged using his employee discount card for “family and personal close folks”.

16. Respondent should have known that allowing friends, family, or any unauthorized persons to utilize his employee discount card is a violation of CVS Pharmacy company policy.

17. Prior to June of 2009, Respondent was specifically counseled by his employer that allowing friends to use and receive his employee discount card was a violation of CVS company policy.

18. Respondent’s co-worker reported to Respondent’s employer that she witnessed Respondent grab her keychain and swipe her employee discount card without permission in order to secure a discount on merchandise he intended purchase.

19. Respondents actions in using a co-worker’s employee discount card without authorization or permission is in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

20. In response to the report of Respondent’s misuse of a co-worker’s employee discount card, CVS Pharmacy’s Loss Prevention Manager, Mr. Steve Sullivan, pulled a

report detailing Respondent's usage of his employee discount card and noticed that Respondent often utilized gift cards to pay for purchases to which his employee discount was applied.

21. CVS Pharmacy's Loss Prevention Manager, Steve Sullivan, tracked four (4) gift cards utilized by Respondent back to their origination and found that said cards were originally authorized by Respondent in the name of pharmacy customers on November 30, 2008 and December 28, 2008.

Misappropriation of Customer Gift Cards

22. In November and December, 2008, CVS Pharmacy, Store #8583 sponsored a promotional event for its pharmacy customers whereby customers qualified to receive a free \$25.00 gift card for each new or transferred prescription presented to CVS Pharmacy.

23. The promotional event was called a "Mini Marathon Market Launch" and employees of CVS were deemed ineligible to receive gift cards as a result of the redemption of coupons that were being offered for new or transferred prescriptions.

24. Respondent signed a written acknowledgement of the terms and conditions of the Mini Marathon Market Launch on August 26, 2007.

25. On November 30, 2008 Respondent activated two (2) gift cards in varying dollar amounts in conjunction with a promotional event held by his employer to benefit qualified pharmacy customers and then kept the gift cards for his own use.

26. On December 28, 2008, Respondent activated two (2) gift cards in varying dollar amounts in conjunction with a promotional event held by his employer to benefit qualified pharmacy customers and then kept the gift cards for his own use.

27. Respondent held a relationship of professional trust and confidence with his employer, his co-workers, and his pharmacy customers throughout the time of his employment as a pharmacy intern at CVS Pharmacy. Respondent violated said professional trust and confidence of his employer, co-workers and customers by misusing gift cards intended for his customers and using them as his own.

28. By securing or keeping gift cards intended for CVS pharmacy customers, Respondent obtained approximately \$200.00 in compensation by fraud, deception and/or misrepresentation.

29. Respondents actions described above and below are in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

**Pharmacy Customer P.M.
November 30, 2008**

30. Respondent was working and on duty at CVS Pharmacy on November 30, 2008.

31. At CVS Pharmacy, each employee, including Respondent, has a unique employee identification number, cashier number, and customer identification number which reflects purchases made with the employee's discount card.

32. Respondent's employee identification number was 566659. Respondent's cashier number was 8583566659. Respondent's customer identification number was 007493.

33. Gift card no. 6101906006691219 was issued by Respondent to pharmacy customer P.M in the amount of \$50.00 for transferring her prescription medication to CVS Pharmacy (Rx no. 530710).

34. On November 30, 2008, at or around 2:50 p.m., Respondent authorized gift card no. 6101906006691219 in connection with the transfer of prescription number 530710

issued to pharmacy customer P.M.

35. Rather than deliver the gift card to pharmacy customer P.M., Respondent kept the \$50.00 gift card issued to pharmacy customer P.M. for his own use.

36. Gift card no. 6101906006691219 was used by Respondent to purchase merchandise from CVS Pharmacy on January 7, 2009, March 15, 2009, March 20, 2009, March 21, 2009, March 22, 2009, and May 10, 2009.

37. In connection with purchases made by Respondent on March 15, 2009, March 21, 2009, and March 22, 2009, Respondent utilized his own employee discount card.

38. In connection with purchases made by Respondent on January 7, 2009, March 20, 2009 and May 10, 2009, Respondent utilized the employee discount card of other CVS employees in violation of CVS Pharmacy company policy.

39. Respondents actions described above are in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

**Pharmacy Customer C.R.
November 30, 2008**

40. Respondent was working and on duty at CVS Pharmacy on November 30, 2008.

41. At CVS Pharmacy, each employee, including Respondent, has a unique employee identification number, cashier number, and customer identification number which reflects purchases made with the employee's discount card.

42. Respondent's employee identification number was 566659. Respondent's cashier number was 8583566659. Respondent's customer identification number was 007493.

43. On November 30, 2008, at or about 4:26 p.m., Respondent issued gift card no.

6101906006691227 to pharmacy customer C.R. in the amount of \$25.00 for transferring her prescription no. 530716 to CVS Pharmacy.

44. Rather than deliver the gift card to pharmacy customer C.R., Respondent kept the \$25.00 gift card issued to pharmacy customer C.R. for his own use.

45. Respondent used gift card no. 6101906006691227 in order to purchase merchandise from CVS Pharmacy on December 21, 2008, December 23, 2008 and January 1, 2009.

46. In connection with purchases made by Respondent on December 21, 2008, December 23, 2008 and January 1, 2009, Respondent utilized the employee discount card of another CVS employee in violation of CVS Pharmacy company policy.

47. Respondents actions described above are in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

**Pharmacy Customer M.W.
December 28, 2008**

48. Respondent was working and on duty at CVS Pharmacy on December 28, 2008.

49. At CVS Pharmacy, each employee, including Respondent, has a unique employee identification number, cashier number, and customer identification number which reflects purchases made with the employee's discount card.

50. Respondent's employee identification number was 566659. Respondent's cashier number was 8583566659. Respondent's customer identification number was 007493.

51. On December 28, 2008, at or about 12:29 p.m., Respondent issued gift card no. 6101906012552082 to pharmacy customer M.W. in the amount of \$50.00 for transferring

two prescriptions (Rx No. 528698 and Rx No. 629691) to CVS Pharmacy.

52. Rather than deliver the gift card to pharmacy customer M.W., Respondent kept the \$50.00 gift card issued to pharmacy customer M.W. for his own use.

53. Gift card no. 6101906012552082 was used by Respondent to purchase merchandise on January 9, 2009, January 18, 2009, January 28, 2009, January 31, 2009, February 13, 2009 and May 10, 2009.

54. In connection with purchases made by Respondent on January 9, 2009, January 18, 2009, and January 31, 2009, Respondent utilized his own employee discount card.

55. In connection with purchases made by Respondent on January 28, 2009, February 13, 2009 and May 10, 2009, Respondent utilized the employee discount card of other CVS employees in violation of CVS Pharmacy company policy.

56. Respondents actions described above are in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

**Pharmacy Customers R.S. and R.Sh.
December 28, 2008**

57. Respondent was working and on duty at CVS Pharmacy on December 28, 2008.

58. At CVS Pharmacy, each employee, including Respondent, has a unique employee identification number, cashier number, and customer identification number which reflects purchases made with the employee's discount card.

59. Respondent's employee identification number was 566659. Respondent's cashier number was 8583566659. Respondent's customer identification number was 007493.

60. On December 28, 2008, at or about 2:00 p.m., Respondent issued gift card no. 6037588538626312 to pharmacy customers R.Sh. and R.S. in the amount of \$75.00 for transferring their prescription medications to CVS Pharmacy.

61. Rather than deliver the gift card to pharmacy customers R.Sh. and R.S., Respondent kept the \$75.00 gift card issued to the pharmacy customers for his own use.

62. Gift card no. 6037588538626312 was used by Respondent to purchase merchandise on February 22, 2009, March 13, 2009, May 17, 2009, May 20, 2009, and May 21, 2009.

63. Respondent was caught on video tape using gift card no. 6037588538626312 on May 17, 2009 and May 20, 2009.

64. In connection with purchases made by Respondent on February 22, 2009, May 17, 2009, and May 20, 2009, Respondent utilized his own employee discount card.

65. In connection with purchases made by Respondent on March 13, 2009, and May 21, 2009, Respondent utilized the employee discount card of other CVS employees in violation of CVS Pharmacy company policy.

66. Respondents actions described above are in violation of §338.055.2(4), (5), and (13) RSMo. (2000).

Interview with Respondent
July 10, 2009

67. On or about July 10, 2009, Board Inspector VanFleet interviewed Respondent.

68. On July 10, 2009, Respondent admitted that he had taken possession of gift cards issued to pharmacy customers upon their transfer of prescriptions to CVS Pharmacy.

69. CVS had a written policy concerning Employee Coupon Abuse which provided, in part, that:

“Violations of any of the above are considered abuse and can lead to disciplinary action, up to and including termination.”

70. Respondents admission that he improperly used or secured coupons intended to benefit CVS pharmacy customers during the Mini-Marathon Market Launch is a violation of §338.055.2(4), (5), and (13) RSMo. (2000).

JOINT CONCLUSIONS OF LAW

71. Cause exists for Petitioner to take disciplinary action against Respondent's license under Section 338.055, RSMo, which states in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

* * *

(13) Violation of any professional trust or confidence;

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's pharmacy intern license will be placed on PROBATION for three (3) years pursuant to the provisions of Chapters 338 and 324 RSMo. During the period of probation, Respondent will be entitled to practice the profession of pharmacy pursuant to Chapter 338, RSMo provided he adheres to the following terms of probation:

A. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations, he must provide the Board a list of all locations worked if requested by the Board or the Board's representative.

B. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to December 31 of each licensing year.

C. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy's staff. Said

meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

E. If, after disciplinary sanctions have been imposed, Respondent ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time for discipline so imposed.

F. If, after disciplinary sanctions have been imposed, Respondent begins employment as a pharmacist, intern pharmacist or technician outside the state of Missouri, such periods shall not be deemed or taken as any part of the time of discipline so imposed. Respondent may petition the Board to seek a waiver for any portion of this requirement by making such a request in written form to the Board for its consideration. No exception will be made to this requirement without prior board approval.

G. If Respondent leaves the state of Missouri for more than 30 consecutive days, such periods shall not be included as a part of the time of discipline so imposed.

H. Respondent shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this disciplinary Order/Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, he must provide each pharmacy and drug distributor

employer and pharmacist/manager-in-charge a copy of this disciplinary Order/Agreement prior to or at the time of any scheduled work assignments.

I. Respondent shall provide all current and future pharmacy schools/colleges where enrolled a copy of this disciplinary Order/Agreement within five (5) business days of the effective date of discipline or the beginning date of each new enrollment.

J. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after this Order/Agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

K. Respondent shall not handle/conduct any transactions using gift cards at a pharmacy.

L. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order/Agreement.

M. The parties to this Order/Agreement understand that the Board of Pharmacy will maintain this Order/Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

2. Upon the expiration of said discipline, Respondent's license as a pharmacist intern in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary

hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent.

3. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

4. No order shall be entered by the Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for a hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent, together with his heirs and assigns, and his attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents,

and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ REQUESTS

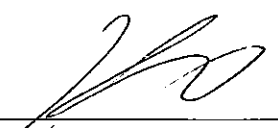
 DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S LICENSE.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

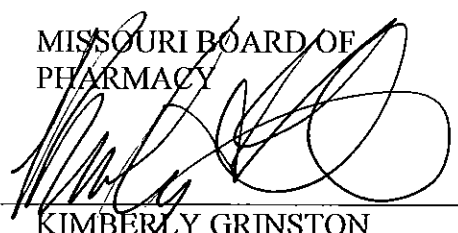
If Respondent has not requested review by the Administrative Hearing Commission, the Settlement agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT




KOFI OSHENE-AGYEKUM
Date: 8/8/10

PETITIONER

MISSOURI BOARD OF
PHARMACY
By: 

KIMBERLY GRINSTON
Executive Director
Date: 8-25-10

NEWMAN, COMLEY & RUTH
P.C.

By: 

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